REMARKS

After the foregoing Amendment, claims 1, 3, 6-7, 9-13 and 24-32 are currently pending in the application, as amended. Claims 1 and 26 have been amended to more particularly point out and define the shape of the picket within the rail. Additionally, claim 26 has been amended to clarify the structure of the rail. Support for the amendment to claims 1 and 26 can be found in at least paragraph [0040] and Figs. 5, 6a, 6b and 9a. Claims 3 and 6 have been amended to be consistent with the amendments to claim 1 and claims 27-29 have been amended to be consistent with the amendments to claim 26. Claim 7 has been amended to more particularly define the internal wall. Support for this amendment can be found in at least paragraph [0041] and Figs. 6a, 6b, 7b, 7c and 7d. Claims 3, 6, 9-13, 24, 25 and 27-29 have been amended to replace the leading word "A" with the word "The". New claim 30- 32 have been added. Support for new claims 30-32 can be found in at least paragraph [0046] and Figs. 6a, 6b, 7b, 7c and 7d. Accordingly, no new matter has been added.

This Amendment is being simultaneously filed with a Request for Continued Examination (RCE) under 37 C.F.R. § 1.114.

Telephone Interview

The present Amendment is being filed based upon a telephone interview conducted between Applicant's attorney John Hemmer and the Examiner on February 14, 2008. As a result of the telephone interview, the Examiner agreed that present invention included structure not disclosed by the cited references. The Examiner stated that he would consider language that more clearly defined the structure of the device. The undersigned, John Hemmer and the Applicant would like to thank the Examiner for the courtesies extended during the telephone interview.

Claim Rejections – 35 U.S.C. § 102

1. The Examiner has rejected claims 1, 3, 6, 7, 9-13, 25, 26 and 28 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,357,681 (Souza). Applicant respectfully traverses this rejection in view of the amendments to the claims.

Amended claim 1 of the present application is directed to a panel for a fence and recites:

> at least one hollow rail; and
> a plurality of pickets supported by the rail, each picket passing through a first aperture and a second aperture in the rail and having a longitudinal axis, the first aperture being spaced from the second aperture along the longitudinal axis, a portion of each picket located inside of the rail between the first and second apertures being compressed partially radially inwardly within the rail in first and second converging directions generally perpendicular to the longitudinal axis thereby expanding the portion of each picket located inside of the rail partially radially outwardly within the rail in first and second diverging directions, the first and second diverging directions being generally perpendicular to the first and second converging directions and the longitudinal axis to thereby prevent further passage of each picket through the first and second apertures. [Underlining added for emphasis]

Applicant respectfully submits that Souza does not disclose or suggest each and every element of amended claim 1. Specifically, Souza does not disclose or suggest a rail having two apertures that are spaced along the longitudinal axes of the pickets (i.e. a vertical direction of an upright panel). In Souza, the railing 16 includes a removable sidewall 20 that includes a plurality of apertures 22 that are spaced in a direction that is perpendicular to the axes of the pickets 31. In amended claim 1, the apertures are spaced in a direction parallel to the longitudinal axes of the pickets such that each picket passes through a pair of apertures resulting in a stronger fence with two points of contact for each picket to each rail as compared to a single contact point at each picket end. Additionally, Souza does not disclose or suggest a portion of each picket between the first and second apertures that is compressed partially radially inwardly within the rail in first and second converging directions generally perpendicular to the longitudinal axis of a picket thereby expanding the portion of each picket located between the first and second apertures partially radially outwardly within the rail in first and second diverging directions. The first and second diverging directions in amended claim 1 are generally perpendicular to the first and second converging directions to thereby prevent further passage of each picket through the first and second apertures. In Souza, the portion 33 of the picket 31 within the rail 16 is flattened in a direction parallel with the longitudinal axis of the picket 31 to expand the portion 33 of the

picket 31 within the rail 16 in all radial directions. Accordingly, Souza fails to disclose each and every element of amended claim 1 of the present application.

Claims 3, 6 and 25 depend upon claim 1 and are patentable over Souza for at least the same reasons discussed above and further due to the additional features that they recite. Based upon the above, Applicant respectfully requests that the Examiner reconsider and withdraw any rejection of claims 1, 3, 6 and 25 based upon anticipation by Souza.

Amended claim 7 of the present application is directed to a panel for a fence and recites:

> at least one hollow rail;
> a plurality of pickets supported by the rail, the rail having an external wall with entry apertures extending through the external wall for receiving the pickets; and
> an internal wall spaced internally from the external wall and having holding apertures for holding end portions of the pickets,
> wherein each picket enters the rail through a respective entry aperture and the end portion of each picket passes through a corresponding holding aperture such that a portion of the picket is held between the respective entry aperture and the corresponding holding aperture. [Underlining added for emphasis]

Applicant respectfully submits that Souza does not disclose or suggest each and every element of amended claim 7. Specifically, Souza does not disclose or suggest a rail that has an internal wall that is spaced internally from an external wall where each picket enters the rail through an entry aperture and passes through a corresponding holding aperture such that a portion of the picket is held between an entry aperture in the external wall and a holding aperture in the internal wall. In Souza, there is no internal wall that is spaced internally from an external wall. The rails in Souza are hollow with no internal structure. Souza only includes an external wall 17, or an external wall 17 with a removable sidewall 20/27.

Even assuming *arguendo* that the removable sidewall 20/27 can be considered an internal wall, the sidewall 20/27 is not spaced internally from the external sidewall 17 such that an end of each picket 33 passes through an entry aperture in the external wall and a holding aperture in the internal wall to hold a portion of the picket between the entry aperture in the external wall and the corresponding holding aperture in the internal wall. In the upper rail 16 of Souza (Fig. 14),

the "entry aperture" (the aperture for receiving the sidewall 20) and the holding aperture are coplanar preventing a reading that a portion of the picket is "held between" the entry and holding apertures. In the lower rail 23 of Souza (Fig. 14), the picket only passes through the external wall 24 and does not pass through an aperture in the "internal wall" (the removable sidewall 27).

Additionally, Souza does not disclose or suggest more than one holding aperture and more than one entry aperture within one rail. If the removable sidewall 20 in Souza is asserted to be the internal wall by the Examiner, the external wall 17 in Souza only contains one "entry aperture" (the aperture for receiving the sidewall 20, see top half of Fig. 14). If the removable sidewall 27 in Souza is asserted to be the internal wall by the Examiner, the "internal wall" 27 in Souza does not contain any apertures (see bottom half of Fig. 14). Accordingly, Souza fails to disclose each and every element of amended claim 7 of the present application.

Claims 9-13 depend upon claim 7 and are patentable over Souza for at least the same reasons discussed above and further due to the additional features that they recite. Based upon the above, Applicant respectfully requests that the Examiner reconsider and withdraw any rejection of claims 7 and 9-13 based upon anticipation by Souza.

Amended claim 26 of the present application is directed to a panel for a fence and recites:

> at least one tubular hollow rail having a unitary and continuous outer wall extending around the periphery of the hollow rail; and
>
> a plurality of pickets on an imaginary plane and supported by the outer wall of the rail, the pickets entering the rail by passage through respective entry apertures in the outer wall of the rail, a portion of each picket located inside of the rail being compressed partially radially inwardly within the rail in first and second converging directions generally perpendicular to the imaginary plane thereby expanding the portion of each picket located inside of the rail partially radially outwardly within the rail in first and second diverging directions generally perpendicular to the first and second converging directions to thereby prevent further passage of the pickets through the respective entry apertures. [Underlining added for emphasis]

Applicant respectfully submits that Souza does not disclose or suggest each and every element of amended claim 26. Specifically, Souza does not disclose or suggest a rail that has a

unitary and continuous outer wall that extends around the periphery of the hollow rail. Souza discloses a three sided rail 16 having a removable and therefore discontinuous sidewall 20 with respect to the periphery of the rail. Souza also fails to disclose or suggest a fence panel where a portion of each picket within the rail is compressed partially radially inwardly within the rail in first and second converging directions generally perpendicular to an imaginary plane that the pickets are arranged on to thereby expand the portion of each picket located inside of the rail partially radially outwardly within the rail in first and second diverging directions. The first and second diverging directions in claim 26 are generally perpendicular to the first and second converging directions to thereby prevent further passage of each picket through the first and second apertures. In Souza, the portion 33 of the picket 31 within the rail 16 is flattened in a direction parallel with the longitudinal axis of the picket 31 to expand the portion 33 of the picket 31 within the rail 16 in all radial directions.

Additionally, Souza does not disclose or suggest more than one holding aperture and more than one entry aperture within one rail. If the removable sidewall 20 in Souza is asserted to be the internal wall by the Examiner, the external wall 17 in Souza only contains one "entry aperture" (the aperture for receiving the sidewall 20, see top half of Fig. 14). If the removable sidewall 27 in Souza is asserted to be the internal wall by the Examiner, the "internal wall" 27 in Souza does not contain any apertures (see bottom half of Fig. 14). Accordingly, Souza fails to disclose each and every element of amended claim 26 of the present application.

Claim 28 depends upon claim 26 and is patentable over Souza for at least the same reasons discussed above and further due to the additional features that they recite. Based upon the above, Applicant respectfully requests that the Examiner reconsider and withdraw any rejection of claims 16 and 28 based upon anticipation by Souza.

2. The Examiner has rejected claims 1, 3, 24, 26 and 29 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,088,902 (Summers). Applicant respectfully traverses this rejection in view of the amendments to the claims.

Amended claim 1 of the present application is directed to a panel for a fence and recites:

> at least one hollow rail; and
> a plurality of pickets supported by the rail, each picket passing through a first aperture and a second aperture in the rail and having a longitudinal axis, the first aperture being spaced from the second aperture along the longitudinal axis, a portion of each picket located inside of the rail between the first and second apertures being compressed partially radially inwardly within the rail in first and second converging directions generally perpendicular to the longitudinal axis thereby expanding the portion of each picket located inside of the rail partially radially outwardly within the rail in first and second diverging directions, the first and second diverging directions being generally perpendicular to the first and second converging directions to thereby prevent further passage of each picket through the first and second apertures. [Underlining added for emphasis]

Applicant respectfully submits that Summers does not disclose or suggest each and every element of amended claim 1. Specifically, Summers does not disclose or suggest a fence panel where a portion of each picket within the rail that is compressed partially radially inwardly within the rail in first and second converging directions generally perpendicular to the longitudinal axis of the picket thereby expanding the portion of each picket located inside of the rail partially radially outwardly within the rail in first and second diverging directions. The first and second diverging directions in amended claim 1 being generally perpendicular to the first and second converging directions to thereby prevent further passage of each picket through the first and second apertures. In Summers, the portion 13 of the picket 10 within the rail 11 is bulged radially outwardly in all directions perpendicular to the pickets. In Summers, the portion 13 of the picket 10 within the rail 11 is not compressed in a direction generally perpendicular to the length of the pickets. Accordingly, Summers fails to disclose each and every element of amended claim 1 of the present application.

Claims 3 and 24 depend upon claim 1 and are patentable over Summers for at least the same reasons discussed above and further due to the additional features that they recite. Based upon the above, Applicant respectfully requests that the Examiner reconsider and withdraw any rejection of claims 1, 3 and 24 based upon anticipation by Summers.

Amended claim 26 of the present application is directed to a panel for a fence and recites:

> at least one tubular hollow rail having a unitary and continuous outer wall extending around the periphery of the hollow rail; and
>
> a plurality of pickets on an imaginary plane and supported by the outer wall of the rail, the pickets entering the rail by passage through respective entry apertures in the outer wall of the rail, a portion of each picket located inside of the rail being compressed partially radially inwardly within the rail in first and second converging directions generally perpendicular to the imaginary plane thereby expanding the portion of each picket located inside of the rail partially radially outwardly within the rail in first and second diverging directions generally perpendicular to the first and second converging directions to thereby prevent further passage of the pickets through the respective entry apertures. [Underlining added for emphasis]

Applicant respectfully submits that Summers does not disclose or suggest each and every element of amended claim 26. Specifically, Summers does not disclose or suggest a fence panel where a portion of each picket within the rail that is compressed partially radially inwardly within the rail in first and second converging directions generally perpendicular to the longitudinal axis of the picket thereby expanding the portion of each picket located inside of the rail partially radially outwardly within the rail in first and second diverging directions. The first and second diverging directions in amended claim 1 being generally perpendicular to the first and second converging directions to thereby prevent further passage of each picket through the first and second apertures. In Summers, the portion 13 of the picket 10 within the rail 11 is bulged radially outwardly in all directions perpendicular to the pickets. In Summers, the portion 13 of the picket 10 within the rail 11 is not compressed in a direction generally perpendicular to the length of the pickets. Accordingly, Summers fails to disclose each and every element of amended claim 1 of the present application.

Claim 29 depends upon claim 26 and is patentable over Summers for at least the same reasons discussed above and further due to the additional features that it recites. Based upon the above, Applicant respectfully requests that the Examiner reconsider and withdraw any rejection of claims 29 and 26 based upon anticipation by Summers.

Claim Rejections – 35 U.S.C. § 103

The Examiner has rejected claim 27 under 35 U.S.C. § 103(a) as being unpatentable over Souza in view of U.S. Patent No. 2,614,827 (Peach). The Examiner argues that Souza discloses each and every element of claim 27 except for a the first and second converging and diverging directions are perpendicular to a longitudinal axis of the picket.

Claim 27 is dependent upon amended claim 1 and is therefore patentable over the Souza for at least the same reasons as discussed above for claim 1. Additionally, Peach does not render claim 27 obvious in view of Souza. Referring to Fig. 17 in Peach, the rail 114 only has one aperture such that the picket 124 may be urged through the aperture and against an interior of the rail 114. The interior of the rail 114 causes the end of the picket to become pinched. Adding a second aperture to Peach would prevent the end of the picket from deforming between the two apertures. Based upon the above, Applicant respectfully requests that the Examiner reconsider and withdraw any rejection of claim 27 based upon Souza in view of Peach.

New Claims

New claims 30-32 depend from amended claim 1 and are patentable over Souza and Summers for at least the same reasons as discussed above for claim 1.

CONCLUSION

In view of the foregoing Amendment and remarks, Applicant respectfully submits that the present application, including claims1, 3, 6-7, 9-13 and 24-32, as amended, is in condition for allowance and such action is respectfully requested.

Respectfully submitted,

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